

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON**
8 **AT SEATTLE**

9 **MARY AND STEPHEN SCHRECK,**) Case No.
10 Plaintiffs,)
11 v.) **COMPLAINT AND JURY DEMAND**
12)
13 **NCMI CORPORATION D/B/A NORTH**
14 **WASHINGTON COLLECTIONS INC. and)**
15 **CRAIG P. HAYES, ATTORNEY AT LAW,**
16 **P.S.,**)
17 Defendants.)

18 **NATURE OF ACTION**

19 1. This is an action brought under the federal Fair Debt Collection Practices Act
20 (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

21 **JURISDICTION AND VENUE**

22 2. This Court has jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
23 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the
24 acts and transactions giving rise to Plaintiffs’ action occurred in this district, where Plaintiffs
25 reside in this district, and/or where Defendants transact business in this district.

26 **PARTIES**

27 4. Plaintiffs, Mary and Stephen Schreck, are natural persons who at all relevant
28

1 times resided in the State of Washington, County of Skagit, and City of Sedro-Woolley.

2 5. Plaintiffs are “consumers” as defined by 15 U.S.C. § 1692a(3).

3 6. Defendant, Craig P. Hayes, Attorney at Law, P.S. (“Hayes”), is an entity that at
4 all relevant times was engaged, by use of the mails and telephone, in the business of attempting
5 to collect a “debt” from Plaintiffs, as defined by 15 U.S.C. § 1692a(5).
6

7 7. Hayes is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

8 8. Defendant, NCMI Corporation d/b/a North Washington Collections, Inc.
9 (“NCMI”), is an entity that acquires debt in default merely for collection purposes and/or is
10 assigned debt for collection purposes, and that at all relevant times was engaged in the business
11 of attempting to collect a “debt” from Plaintiffs, as defined by 15 U.S.C. § 1692a(5).
12

13 9. NCMI is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

14 **FACTUAL ALLEGATIONS**

15 10. The Schrecks are natural persons obligated, or allegedly obligated, to pay a debt
16 owed or due, or asserted to be owed or due a creditor.
17

18 11. The Schrecks’ obligation, or alleged obligation, owed or due, or asserted to be
19 owed or due a creditor, arises from a transaction in which the money, property, insurance, or
20 services that are the subject of the transaction were incurred primarily for personal, family, or
21 household purposes – namely attorneys’ fees incurred in disputing a personal medical bill.
22

23 12. Hayes uses instrumentalities of interstate commerce or the mails in a business
24 the principal purpose of which is the collection of any debts, and/or regularly collects or
25 attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due
26 another.
27

28 13. NCMI purchases debts once owed or once due, or asserted to be once owed or

1 once due a creditor, and/or is assigned debt for collection purposes.

2 14. NCMI acquired or was assigned the Schrecks' debt once owed or once due, or
3 asserted to be once owed or once due a creditor, when the debt was allegedly in default.
4

5 15. NCMI is thoroughly enmeshed in the debt collection business, and Hayes is a
6 significant participant in NCMI's debt collection process.

7 16. At all relevant times, Hayes acted as NCMI's agent in attempting to collect an
8 alleged debt from the Schrecks on NCMI's behalf.

9 17. On or about July 2004, the Schrecks retained the services of attorney James
10 Sturdevant ("Sturdevant") for assistance in disputing and negotiating down a \$2,080.00
11 medical bill.
12

13 18. Sturdevant made a number of significant errors during his representation of the
14 Schrecks, including failing to appear for a hearing. The Schrecks have filed a grievance with
15 the Washington State Bar relating to Sturdevant's services, and that grievance is currently
16 under investigation. Sturdevant was disciplined by the Washington State Bar on August 16,
17 2011 for similar issues and problems with another client, including failure to provide competent
18 representation, failure to act with reasonable diligence in representing a client, and failure to
19 communicate.
20

21 19. As of May 2005, Sturdevant billed the Schrecks approximately \$3600 for
22 services purportedly rendered in connection with a \$2,080 medical bill. Sturdevant's billing
23 went well beyond what the Schrecks discussed with Sturdevant when they hired him.
24 Ultimately, the Schrecks paid \$3,365; \$1,365 over what they agreed to spend. The Schrecks
25 then fired Sturdevant as their attorney and advised him that they would not pay more money
26 because he had already charged more than they agreed upon.
27
28

1 20. Sturdevant, however, continued to bill the Schrecks for services and interest
2 even after he was fired as their attorney.

3 21. In total, Sturdevant appears to have billed the Schrecks more than \$12,000 in
4 negotiating Mary Schrecks's medical bill from \$2,080 to \$1,600.

5 22. Mary Schreck was diagnosed with terminal cancer in 2006. Throughout
6 Defendants' debt collection efforts (described below), Mary was battling terminal cancer and
7 undergoing chemotherapy treatments.

8 23. On or about February 2006, Sturdevant began attempting to collect from the
9 Schrecks.

10 24. On December 7, 2006, NCMI advised the Schrecks that their account with
11 Sturdevant had been assigned to NCMI. NCMI, itself and on behalf of Sturdevant, began
12 attempting to collect from the Schrecks.

13 25. In 2006 and 2007, the Schrecks repeatedly disputed the alleged debt with both
14 Sturdevant and NCMI.

15 26. Upon information and good faith belief, NCMI and Sturdevant stopped
16 attempting to collect the alleged debt in 2007. They did not renew their collection efforts until
17 May 2011, shortly after Sturdevant and Mary Schreck had a chance encounter at a hospital
18 where Mary Schreck was undergoing cancer treatments.

19 27. Upon information and good faith belief, Sturdevant and Hayes have had a long-
20 term business relationship and have legal offices in the same building.

21 28. Upon information and good faith belief, shortly after the chance encounter
22 between Sturdevant and Mary Schreck at the hospital, NCMI hired Hayes to assist in filing a
23 lawsuit against the Schrecks.

1 29. Upon information and good faith belief, Hayes has been a significant participant
2 in NCMI's debt collection process over at least the past few years.

3 30. On May 16, 2011, Hayes filed a lawsuit on behalf of NCMI against the Schrecks
4 regarding the alleged debt in the Skagit County District Court. In its suit, NCMI sought
5 \$5239.71 in principal and \$3298.88 in interest, plus costs and attorneys' fees.
6

7 31. In connection with the collection of the alleged debt, Hayes, himself and on
8 behalf of NCMI, sent the Schrecks written communications, including letters dated February
9 16, 2012, February 17, 2012, and March 20, 2012.
10

11 32. In its February 16, 2012, February 17, 2012, and March 20, 2012
12 communications, Hayes failed to notify the Schrecks that the communications were from a debt
13 collector.

14 33. The Skagit County District Court initially scheduled the trial for NCMI's
15 lawsuit to take place on May 24, 2012. The trial did not take place until August 30, 2012,
16 however, because Hayes repeatedly delayed the trial, rescheduled the trial date, and then failed
17 to appear for trial on the rescheduled dates, without notifying the Schrecks of the cancellations
18 per standard court procedure.
19

20 34. On March 20, 2012, Hayes notified the court that he had a conflict and would
21 have to re-schedule the trial date.
22

23 35. On May 31, 2012, more than two months after Hayes advised the court he would
24 re-schedule the trial date, Hayes set the trial for June 18, 2012. According to the court's docket
25 sheet, June 18, 2012 was an "an invalid date" in that trial settings were not available for that
26 date. The docket sheet establishes that the court notified Hayes that this date was invalid and
27 that it would not schedule the trial for June 18, 2012. Yet, Hayes did not advise the Schrecks of
28

1 this information per standard court procedure, and the Schrecks appeared at the court on June
2 18, 2012 pursuant to the notice they had received from Hayes.

3 36. On July 3, 2012, Hayes re-scheduled the trial for July 30, 2012. Again
4 according to the docket sheet, Hayes attempted to set the trial on an invalid date for which trial
5 settings were not available, and the Skagit County District Court e-mailed him notice to that
6 effect. And, once again, Hayes did not advise the Schrecks that the trial would not occur. As a
7 result, the Schrecks appeared at the court on July 30, 2012 pursuant to the notice they had
8 received from Hayes, only to be informed by the court clerk that the trial would not occur.
9

10 37. On July 24, 2012, Hayes again re-scheduled the trial, this time for August 13,
11 2012. However, the trial did not take place on this date either.

12 38. Ultimately, the Schrecks asked the court for a trial date to reach a resolution and
13 to force Hayes and NCMI to appear.
14

15 39. On August 20, 2012, the court set the trial for August 30, 2012, and the trial
16 finally took place on that date.
17

18 40. The next day, on August 31, 2012, the Skagit County District Court
19 Commissioner found in favor of the Schrecks, stating in relevant part:
20

21 The court finds in favor of the defendants.

22 A preponderance of the evidence favors the defendant's version of events on most
23 disputed issues. Mr. Sturdevant's records were disorganized, inaccurate, and
24 **failed to account for a substantial payment.** His recollection of events,
25 including the events leading to the oral contract for employment, were relatively
26 vague and equivocal. Mr. Sturdevant failed to communicate appropriately with
27 his clients, and as a result, performed work that, while perhaps not expressly
28 outside the scope of his employment, would certainly not have been authorized.

The court finds that the work performed by Mr. Sturdevant was not reasonable
and necessary given the limitations on the scope of his work, and that it exceeded
express limitations on fees.

1 Letter Opinion by Linford C. Smith, Commissioner (emphasis added).

2 41. On or about September 18, 2012, the court entered final judgment in favor of the
3 Schrecks and dismissed the case with prejudice.

4 42. During the course of the August 30, 2012 trial, Hayes and NCMI submitted a
5 bill for attorneys' fees that was not accurate.

6 43. As shown above, a court of competent jurisdiction determined that the debt was
7 not validly due or owing and that the bill for attorneys' fees submitted at trial was not accurate.

8 44. Hayes and NCMI falsely represented the character and amount of the Schrecks'
9 alleged debt in numerous ways, including but not limited to maintaining a lawsuit and
10 continuing to collect an alleged debt that was disputed and exceeded the fees the Schrecks
11 expressly agreed upon with Sturdevant, as well as submitting an inaccurate billing statement to
12 the Skagit County District Court.

13 45. Further, Hayes and NCMI used unfair or unconscionable means against the
14 Schrecks in connection with an attempt to collect an alleged debt, including but not limited to
15 repeatedly rescheduling and cancelling the trial in Skagit County District Court and failing to
16 notify the Schrecks when the trial date had been cancelled during a time frame when Mary
17 Schreck was undergoing chemotherapy treatments, as well as submitting an inaccurate billing
18 statement to the Skagit County District Court.

19 46. Upon information and good faith belief, Defendants were aware of Mary
20 Schreck's medical condition.

21 47. Hayes' and NCMI's actions constitute conduct highly offensive to a reasonable
22 person.

23 48. The Schrecks incurred out-of-pocket expenses, including but not limited to time
24
25
26
27
28

1 and expense in responding to and defending against Defendants' collection efforts relating to
2 approximately 96 hours spent in preparing for, driving to, and attending the trial. Further, the
3 Schrecks incurred approximately \$512.00 in out-of-pocket expenses in preparing, appearing,
4 and defending against Defendants' collection efforts, including mileage costs, attorneys' fees,
5 and copying costs.
6

7 49. Defendants' behavior has caused personal humiliation, embarrassment, mental
8 anguish, and emotional distress to the Schrecks.
9

10 50. As a result of Defendants' behavior, Mary and/or Stephen Schreck felt
11 depressed, confused, frightened, angry, and scared, and also suffered from anxiety,
12 sleeplessness, and discomfort in social settings and experienced a threat to their personal
13 character and reputation.
14

15 51. The personal humiliation, embarrassment, mental anguish, and emotional
16 distress that the Schrecks have suffered was a natural consequence of Defendants' deceptive
17 and abusive efforts to collect the debt allegedly due.
18

19 52. Defendants' efforts to collect the debt allegedly due significantly impacted the
20 Schrecks' quality of life at a time when Mary Schreck was battling terminal cancer. For
21 example, the Schrecks were unable to take a vacation during the summer of 2012 because of
22 the repeated cancellation and rescheduling of the trial and the resultant uncertainty of their
23 schedule.
24

25 53. Defendants' behavior, and the personal humiliation, embarrassment, mental
26 anguish, and emotional distress that the Schrecks suffered as a result of Defendants' deceptive
27 and abusive efforts to collect the debt allegedly due, substantially disrupted the Schrecks' daily
28 routine for a period of several months.

1 54. The personal humiliation, embarrassment, mental anguish, and emotional
2 distress that the Schrecks have suffered as a result of Defendants' efforts to collect the debt
3 allegedly due constitutes more than mere worry, vexation, inconvenience, or unpleasantness.
4
5 Mary Schreck had to seek medical treatment for anxiety and stress related to Defendants' debt
6 collection efforts and had to delay her chemotherapy treatments because of the repeated
7 cancellation and rescheduling of the trial.

8 55. The personal humiliation, embarrassment, mental anguish, and emotional
9 distress that the Schrecks have suffered as a result of Defendants' efforts to collect the debt
10 allegedly due was the result of conduct above and beyond occasional acts and words that are
11 inconsiderate and unkind.

12
13 56. The threat to the Schrecks' personal character and reputation, which they
14 experienced as a result of Defendants' deceptive and abusive efforts to collect the debt
15 allegedly due, rose above and beyond mere injury to feelings resulting from insulting language.
16

17 **COUNT I**
18 **VIOLATION OF 15 U.S.C. § 1692e(2)(A)**
19 **HAYES**

20 57. Plaintiffs repeat and re-allege each and every factual allegation above.

21 58. Hayes violated 15 U.S.C. § 1692e(2)(A) by falsely representing the character,
22 amount, or legal status of the Schrecks' alleged debt.

23 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- 24 a) Adjudging that Hayes violated 15 U.S.C. § 1692e(2)(A);
25 b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A),
26 in the amount of \$1,000.00;
27 c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
28

- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT II
VIOLATION OF 15 U.S.C. § 1692e(2)(A)
NCMI

59. Plaintiffs repeat and re-allege each and every factual allegation above.

60. NCMI violated 15 U.S.C. § 1692e(2)(A) by falsely representing the character, amount, or legal status of the Schrecks' alleged debt.

61. NCMI, by virtue of its status as a "debt collector" under the FDCPA, is also liable for the actions of Hayes, the debt collector it hired to collect an alleged debt from the Schrecks on its behalf.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that NCMI violated 15 U.S.C. § 1692e(2)(A);
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT III
VIOLATION OF 15 U.S.C. § 1692e(10)
HAYES

62. Plaintiffs repeat and re-allege each and every factual allegation above.

63. Hayes violated 15 U.S.C. § 1692e(10) by using false representations or deceptive practices in connection with the collection of an alleged debt from the Schrecks.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that Hayes violated 15 U.S.C. § 1692e(10);
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT IV
VIOLATION OF 15 U.S.C. § 1692e(10)
NCMI

64. Plaintiffs repeat and re-allege each and every factual allegation above.

65. NCMI violated 15 U.S.C. § 1692e(10) by using false representations or deceptive practices in connection with the collection of an alleged debt from the Schrecks.

66. NCMI, by virtue of its status as a "debt collector" under the FDCPA, is liable for the actions of Hayes, the debt collector it hired to collect an alleged debt from the Schrecks on its behalf.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that NCMI violated 15 U.S.C. § 1692e(10);
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A),
in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be
allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT V
VIOLATION OF 15 U.S.C. § 1692e(11)
HAYES

67. Plaintiffs repeat and re-allege each and every factual allegation above.

68. Hayes violated 15 U.S.C. § 1692e(11) by failing to notify the Schrecks during
each communication made in connection with the collection of a debt that the communication
was from a debt collector.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that Hayes violated 15 U.S.C. § 1692e(11);
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A),
in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be
allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT VI
VIOLATION OF 15 U.S.C. § 1692e(11)
NCMI

69. Plaintiffs repeat and re-allege each and every factual allegation above.

70. Hayes violated 15 U.S.C. § 1692e(11) by failing to notify the Schrecks during each communication made in connection with the collection of a debt that the communication was from a debt collector.

71. NCMI, by virtue of its status as a “debt collector” under the FDCPA, is liable for the actions of Hayes, the debt collector it hired to collect an alleged debt from the Schrecks on its behalf.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that NCMI violated 15 U.S.C. § 1692e(11);
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiffs reasonable attorneys’ fees and costs incurred in this action;
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT VII
VIOLATION OF 15 U.S.C. § 1692f
HAYES

72. Plaintiffs repeat and re-allege each and every factual allegation above.

73. Hayes violated 15 U.S.C. § 1692f by using unfair or unconscionable means against the Schrecks in connection with an attempt to collect an alleged debt.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that Hayes violated 15 U.S.C. § 1692f;
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A),
in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be
allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

COUNT VIII
VIOLATION OF 15 U.S.C. § 1692f
NCMI

74. Plaintiffs repeat and re-allege each and every factual allegation above.

75. NCMI violated 15 U.S.C. § 1692f by using unfair or unconscionable means
against the Schrecks in connection with an attempt to collect an alleged debt.

76. NCMI by virtue of its status as a "debt collector" under the FDCPA, is liable for
the actions of Hayes, the debt collector it hired to collect an alleged debt from the Schrecks on
its behalf.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- a) Adjudging that NCMI violated 15 U.S.C. § 1692f;
- b) Awarding Plaintiffs statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A),
in the amount of \$1,000.00;
- c) Awarding Plaintiffs actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiffs reasonable attorneys' fees and costs incurred in this action;

1 e) Awarding Plaintiffs any pre-judgment and post-judgment interest as may be
2 allowed under the law;

3 f) Awarding such other and further relief as the Court may deem just and proper.
4

5 **TRIAL BY JURY**

6 77. Plaintiffs are entitled to and hereby demand a trial by jury.
7

8 Respectfully submitted this 18th day of December, 2012.
9

10 s/Jon N. Robbins
11 Jon N. Robbins (WBN: 28991)
12 WEISBERG & MEYERS, LLC
13 Attorney for Plaintiffs
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28